

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

|                         |   |                      |
|-------------------------|---|----------------------|
| DUNCAN J. MCNEIL, III,  | ) |                      |
|                         | ) | 8:05cv389            |
| Plaintiff,              | ) |                      |
|                         | ) | MEMORANDUM AND ORDER |
| vs.                     | ) |                      |
|                         | ) |                      |
| UNITED STATES , et al., | ) |                      |
|                         | ) |                      |
| Defendants.             | ) |                      |

This matter is before the court on filing no. 29, the Judgment by the Eighth Circuit Court of Appeals dismissing the plaintiff's appeal and assessing the \$255 appellate filing and docketing fees against the plaintiff. Because the plaintiff is a prisoner subject to the Prison Litigation Reform Act, the Eighth Circuit's Judgment states in pertinent part: "The full \$255.00 appellate filing and docketing fees are assessed against the appellant. The court remands the collection of those fees to the district court."

Because the Eighth Circuit denied the plaintiff's Motion to Proceed In Forma Pauperis on appeal, the plaintiff is not entitled to collection of his appellate filing fees on the installment method contemplated by 28 U.S.C. § 1915(b)(2) and Henderson v. Norris, 129 F.3d 481 (8<sup>th</sup> Cir. 1997). Therefore, the plaintiff's institution shall collect the \$255 filing fees from the plaintiff's inmate trust account whenever funds exist in that account and shall remit them to the Clerk of this Court until the full \$255 obligation has been satisfied.

THEREFORE, IT IS ORDERED:

1. That the Eighth Circuit Court of Appeals has adjudged the plaintiff liable for the full \$255.00 appellate filing and docketing fees;
2. That, because the plaintiff is a prisoner, the fees may not be waived;
3. That, because the Eighth Circuit denied the plaintiff's Motion to Proceed In Forma Pauperis on appeal, the plaintiff is not entitled to pay the fees in installments pursuant to 28 U.S.C. § 1915(b);
4. That as funds become available in the plaintiff's inmate trust account, the plaintiff's custodian shall collect and remit them until the entire \$255 appellate filing fees

have been paid; and

5. That the Clerk of the Court shall send a copy of this Memorandum and Order to the appropriate financial officer for the plaintiff's institution.

March 15, 2006.

BY THE COURT:

*/s Richard G. Kopf*  
United States District Judge